

Docket No.: 345288015US
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Henry B. Strub et al.

Application No.: 10/764,309

Confirmation No.: 8261

Filed: January 22, 2004

Art Unit: 2621

For: LOW ATTENTION RECORDING, WITH
PARTICULAR APPLICATION TO SOCIAL
RECORDING

Examiner: Robert Chevalier

APPLICATION FOR PATENT TERM ADJUSTMENT RECONSIDERATION
UNDER 37 C.F.R. § 1.705(B)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant requests reconsideration of the patent term adjustment indicated in the Notice of Allowance of January 6, 2009.¹

(1) Applicant is including the fee set forth in 37 C.F.R. § 1.18(e). Please charge any deficiencies or credit any overpayment to our Deposit Account No. 50-0665, under Order No. 345288015US from which the undersigned is authorized to draw.

¹ Applicant's representative, Maurice Pirio, discussed issues relating to the filing of this Application with Mr. Kery Fries of the U.S.P.T.O. on November 20, 2008. Mr. Fries advised that, since the U.S.P.T.O. is holding applications such as this one in abeyance until issuance of the patent, applicant may wait until the time of issuance and file an application under 37 C.F.R. § 1.705(d), rather than file this Application. (See, also, "Decision Holding PTA Request in Abeyance Until After Issue Date," U.S. Patent Application No. 10/274,829, Jan. 30, 2007.) It appears, however, that there may be some question as to whether the 37 C.F.R. § 1.705(b) requires filing such an application no later than the payment of the issue fee. In an abundance of caution, applicant is therefore filing this Application at the time of paying the issue fee. Applicant apologizes for any inconvenience this may cause.

(2) Statement of Facts

(i) Correct Patent Term Adjustment and Bases for Adjustment

The correct patent term adjustment is 1,528 days. The PTO's calculated patent term adjustment is 943 days. Applicant is entitled to an additional 585 days of patent term adjustment.

The PTO properly accounted for the delay under 35 U.S.C. § 154(b)(1)(A), referred to as the "A delay." The A delay is 990 days.

The PTO failed to properly account for the delay under 35 U.S.C. § 154(b)(1)(B), referred to as the "B delay." The B delay, assuming that the patent will issue on July 14, 2009,² is 904 days.

The PTO failed to properly account for the overlap under 35 U.S.C. § 154(b)(2)(A) in the A delay and the B delay. The overlap is 319 days.

The PTO properly accounted for the reduction in patent term adjustment under 35 U.S.C. § 154(b)(2)(C). The reduction is 47 days.

The correct patent term adjustment is the sum of the A delay and the B delay minus the overlap and minus the reduction. Thus, the correct patent term adjustment is $990+904-319-47$, which is 1,528 days.

(ii) Relevant Dates

A Delay		
Filing Date + 14 months	3/22/05	↓
First Office Action	12/7/07	990
Total		990

² The PTO's calculation of patent term adjustment assumed this to be the issue date in the "Determination of Patent Term Adjustment under 35 U.S.C. § 154(b)" that was included with the Notice of Allowance.

B Delay		
Filing Date + 3 years	1/22/07	↓
Projected Issue Date	7/14/09	904
Total		904

Overlap		
Filing Date + 3 years	1/22/07	↓
Office Action	12/7/07	319
Total		

Reduction		
Office Action	1/23/08	↓
Reply to Office Action	5/22/08	29
Office Action	9/5/08	↓
Reply to Office Action	12/23/08	18
Total		47

(iii) Terminal Disclaimer

The patent is not subject to a terminal disclaimer.

(iv) Failure to Engage in Reasonable Efforts

Applicant is not contesting the reduction in patent term adjustment of 47 days as accounted for by the PTO that are "deemed" to be a failure to engage in reasonable efforts under 37 C.F.R. § 1.704. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application under 37 C.F.R. § 1.704.

Dated: March 3, 2009

Respectfully submitted,

By 

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